Supreme Court, U.S.
FILED
JUN 24 1992
OFFICE OF THE CLERK

(2)

No. 91-1962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

UNION MORTGAGE COMPANY, INC.,
Petitioner,

vs.

WILLIE MAE BARLOW and WILLIE J. GALY,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner's "Statement of the Case" misrepresents the facts on which this case was decided. The true facts upon which this case was *unanimously* decided by the Alabama Supreme Court are set forth in that court's lengthy opinion. *Union Mortgage Co. v. Barlow*, 595 So. 2d 1335 (Ala. 1992). Respondents will not restate these facts which are succinctly recited in the Alabama Supreme Court's oplnlon .

On March 4, 1991, final judgment was entered by the Circuit Court of Lowndes County, Alabama, the trial court in this case. (Petitioner's Appendix E). This was the *first* final judgment ever entered against the Petitioner which assessed punitive damages.

On April 8, 1991, the trial court conducted a hearing to review the punitive damages award pursuant to *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991); *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989); and *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986). The transcript of that hearing is 555 pages of a 1,938 page reporter's transcript of the record on appeal. The hearing is accurately described by the Alabama Supreme Court in its opinion as "extensive." *Barlow, supra*, 595 So. 2d at 1345.

On April 26, 1991, the trial court entered an order in accordance with the procedure affirmed in *Haslip*. (Petitioner's Appendix F).

On May 22, 1991, Petitioner filed its notice of appeal to the Alabama Supreme Court. Petitioner posted a supersedeas bond staying execution on the judgment.

On October 8, 1991, the Alabama Supreme Court, en banc, heard oral arguments by Petitioner and Respondents. The opportunity for oral argument is rarely granted by the Alabama Supreme Court.

On November 13, 1991, one month after oral argument was heard by the Alabama Supreme Court, the Barbour County, Alabama Circuit Court entered an order in *Baker v. Harper* referred to by the Petitioner. (Petitioner's Appendix D). The order was filed by the Barbour County Circuit Court on November 14, 1991. (Petitioner's Appendix O, p. 86a). Petitioner made the decision to satisfy the *Baker* plaintiffs' judgments in the total amount of $4.5 million, which was an agreed upon settlement by the parties in that case. Petitioner agreed to pay the Barbour County plaintiffs *$4,000,000* in *compensatory damages* and *$500,000* in *punitive damages*. The very order entered by the Barbour County Circuit Court in *Baker v. Harper* was prepared by the trial attorneys for Petitioner in this case. (Petitioner's Appendix O, p. 87a). A satisfaction of judgment for each of the

five plaintiffs was filed on the same day the order was filed, November 14, 1991. (Petitioner's Appendix P).

On the same day the Barbour County Circuit Court filed the order in *Baker v. Harper*, November 14, 1991, Petitioner filed in the Alabama Supreme Court a motion to supplement the record on appeal in this Lowndes County Circuit Court case with matters from the subsequent proceedings from the Barbour County Circuit Court. (Petitioner's Appendix M). These matters were improperly admitted into the record on appeal in this case through clerical error, which error was subsequently corrected through the granting of Respondents' motion to strike. Alabama Rules of Appellate Procedure, Rule 10(f), provides the only procedure by which the record on appeal is supplemented. This rule only permits the inclusion of matters *which were in evidence at the trial level* and inadvertently omitted from the record on appeal. *See Richburg v. Cromwell*, 428 So. 2d 621 (Ala. 1983). Matters from another trial, from another circuit court, in which Respondents were not a party are obviously not within the scope of this rule.

On January 10, 1992, in accordance with *Haslip*, the Alabama Supreme Court unanimously affirmed the punitive damages award in this case, "[a]fter a thorough review of the record." *Barlow*, *supra*, 595 So. 2d at 1348.

On January 24, 1992, Petitioner filed in the Alabama Supreme Court an application for rehearing and, in the alternative, a motion to stay the issuance of the mandate pending certiorari proceedings. On March 6, 1992, the Alabama Supreme Court issued an order denying both the application for rehearing and the stay, with the certificate of judgment scheduled to issue March 24, 1992.

On March 11, 1992, Petitioner filed in this Court, an application to stay mandate of Supreme Court of Alabama pending certiorari, designated Application No. A-681. Petitioner main-

tained in its application that it was entitled as a matter of right to the stay pending filing of a petition for certiorari unless this Court determined that " 'the case bears no reasonable chance of review by this Court.' *American Mfrs. Mut. Ins. Co. v. American Broadcasting Paramount Theatre, Inc.*, 87 S. Ct. 1, 1-2 (1966) (Harlan, J., in chambers)." (Union Mortgage Inc.'s Application to Stay Mandate of Supreme Court of Alabama Pending Certiorari, Application No. A-681, Mar. 11, 1992, p. 6). Petitioner's grounds for contending in its application that a reasonable chance existed for this Court to grant its petition for a writ of certiorari are the same grounds asserted in the petition now before the Court filed June 4, 1992.

By letter dated March 20, 1992, the Clerk of this Court advised the Respondents of the following order:

> The application for a stay of mandate pending timely filing and disposition of petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on March 20, 1992 endorsed thereon the following:
>
> "Denied
> Anthony M. Kennedy
> March 20, 1992"

The letter is reprinted at Appendix A of this brief.

By letter dated March 20, 1992, Petitioner requested that its application be renewed, which letter reads in pertinent part:

> In accordance with Rule 22.5 of this Court, Union Mortgage Company, Inc., Petitioner in the above-captioned case, respectfully requests that its application To Stay Mandate Of Supreme Court of Alabama Pending Certiorari be renewed to Justice Sandra Day O'Connor. In the absence of a Stay from this Court, the state court will issue its mandate on March 24, 1992, at which time Respondents will be entitled to execute on the judgment.

The letter is reprinted at Appendix B of this brief.

By letter dated March 23, 1992, the Clerk of this Court advised of the following action taken on the application:

> The Court today entered the following order in the above-entitled case:
>
> > "The application for stay of mandate addressed to Justice O'Connor and by her referred to the Court is denied."

The letter is reprinted at Appendix C of this brief.

On March 24, 1992, the Alabama Supreme Court issued its mandate.

On March 25, 1992, Petitioner paid the judgment. Respondents delivered to Petitioner a satisfaction of judgment on March 25, 1992.

On June 4, 1992, the 90th day after entry of the order of the Alabama Supreme Court denying rehearing, Petitioner filed a petition for a writ of certiorari. The petition was received by Respondents on June 10, 1992.

SUMMARY OF THE ARGUMENT OF RESPONDENTS

No special and important reasons are presented by Petitioner for granting the petition in that *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991), is dispositive authority.

ARGUMENT OF THE RESPONDENTS

Petitioner has not presented "special and important reasons" for granting the petition for a writ of certiorari in this case. Rules of the Supreme Court of the United States, Rule 10.1.

The sum and substance of the Petitioner's argument that the petition should be granted is stated in the following excerpt from the petition:

> "Union's constitutional challenge to the judgment is not based on an argument that Alabama's nominal procedures for awarding punitive damages violate Union's due process rights—those procedures were upheld in *Haslip*. Union's challenge is to Alabama's refusal to apply those procedures, and also to its post-judgment creation of a classification which impermissibly discriminated against Union on the basis of its parent's national origin. The result was the affirmance of the jury's punitive damages verdict in full, when Alabama procedures, applied in the manner contemplated by *Haslip*, should have resulted in elimination or substantial reduction of those damages."

(Petition, pp. 28-29).

Petitioner acknowledges that this Court's decision in *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991), is controlling authority in this case. Petitioner further concedes that its due process rights were not violated in this case if Alabama's procedures for awarding punitive damages were applied in accordance with *Haslip*. Respondents submit that Petitioner was afforded the due process protections affirmed in *Haslip*.

On April 8, 1991, the trial court conducted a hearing to review the punitive damages award pursuant to *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991); *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989); and *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986). The transcript of the hearing is 555

pages of a 1,938 page reporter's transcript of the record on appeal. The hearing is accurately described by the Alabama Supreme Court in its opinion as "extensive." *Barlow, supra*, 595 So. 2d at 1345.

On April 26, 1991, the trial court entered an order affirming the punitive damages award of the jury in accordance with *Haslip*. (Petitioner's Appendix F).

On October 8, 1991, the Alabama Supreme Court, en banc, heard oral arguments by Petitioner and Respondents. The opportunity for oral argument is seldom granted by the Alabama Supreme Court.[1] A substantial portion of the oral argument in this case dealt with the reprehensibility of the Petitioner's conduct in light of the trial court's affirmance of the punitive damages award.

On January 10, 1992, the Alabama Supreme Court entered its unanimous opinion affirming the punitive damages judgment in this case. *Union Mortgage Co., Inc. v. Barlow*, 595 So. 2d 1335 (Ala. 1992). The Alabama Supreme Court specifically addressed the question: "*Was the jury's award of punitive damages excessive under the facts of this case*?" *Barlow, supra*, 595 So. 2d at 1345.

The Alabama Supreme Court determined that "[t]here was ample evidence presented to support the trial court's determination that Union Mortgage engaged in a pattern and practice of intentional wrongful conduct." *Barlow, supra*, 595 So. 2d at 1345. The Alabama Supreme Court reprinted verbatim the trial court's order entered "after an extensive hearing pursuant to

---

[1] On June 16, 1992, the Clerk of the Alabama Supreme Court informed counsel for the Respondents that during that court's term for the period October, 1990 through October, 1991, the Alabama Supreme Court received 893 appeals and 823 petitions for writ of certiorari. The Alabama Supreme Court during the 1990-1991 term granted oral argument in only 65 cases.

Hammond v. City of Gadsden, 493 So. 2d 1374 (Ala. 1986) and its progeny." *Barlow, supra*, 595 So. 2d at 1345-1347. Based upon its own review of the record, the Alabama Supreme Court held as follows regarding the trial court's *Hammond* order:

> "In reviewing the punitive damages award in this case, the trial judge stated the reasons why the verdict should not be remitted. After a thorough review of the record, we hold that the facts aptly support the trial court's decision." *Barlow, supra*, 595 So. 2d at 1347-1348.

Petitioner's attempt to raise a constitutional question relating to a non-party, Skopbank, is without merit. Rules of the United States Supreme Court, Rule 12. Union Mortgage is a Texas corporation. The sole shareholder of Union Mortgage is a Texas holding company. Skopbank is the sole shareholder of that Texas holding company. Skopbank funneled money to the Texas holding company. The Texas holding company then, in turn, funneled money to Union Mortgage and other subsidiaries of the Texas holding company. Union Mortgage used the money funneled by the Texas holding company as capital to perpetrate its fraudulent course of business. The judgment affirmed in this case was only against Union Mortgage, a Texas corporation. The only assets available to satisfy the judgment through legal process were assets of Union Mortgage.

CONCLUSION

Based upon the foregoing facts, authorities and arguments, the petition for a writ of certiorari is due to be denied.

Respectfully submitted,

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P. O. Box 4807
Montgomery, Alabama 36104
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Attorneys for Respondents

APPENDICES

APPENDIX A

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543
(202) 479-3011

WILLIAM K. SUTER,
CLERK OF THE COURT

March 20, 1992

Mr. John A. Taber
Taber & Dansby
418 Scott Street
Montgomery, AL 36104

Re: Union Mortgage Company, Inc.,
v. Willie Mae Barlow and Willie J. Galy
Application No. A-681

Dear Mr. Taber:

The application for a stay of mandate pending timely filing and disposition of petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on March 20, 1992 endorsed thereon the following:

"Denied
Anthony M. Kennedy
March 20, 1992"

Very truly yours,

WILLIAM K. SUTER, Clerk

By: /s/ Francis J. Lorson
Francis J. Lorson
Chief Deputy Clerk

NOTE — FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

NOTIFICATION LIST

Mr. Robert J. Sisk
Hughes, Hubbard & Reed
One Battery Park Plaza
New York, NY 10004

Mr. John A. Taber
Taber & Dansby
418 Scott Street
Montgomery, AL 36104

Mr. Edward L. Hardin
Hardin, Tucker & Martin
2151 Highland Avenue, Ste. 100
Birmingham, AL 35255-5705

APPENDIX B

HUGHES HUBBARD & REED
1300 I Street, NW
Washington, DC 20005-3306
(202) 408-3600

March 20, 1992

William K. Suter, Esq.
Clerk of the Court
U.S. Supreme Court Building
Washington, D.C. 20543

Re: Union Mortgage Co. v. Barlow, No. A-681

Dear Mr. Suter:

In accordance with Rule 22.5 of this Court, Union Mortgage Company, Inc., Petitioner in the above-captioned case, respectfully requests that its application To Stay Mandate Of Supreme Court of Alabama Pending Certiorari be renewed to Justice Sandra Day O'Connor. In the absence of a Stay from this Court, the state court will issue its mandate on March 24, 1992, at which time Respondents will be entitled to execute on the judgment.

Sincerely yours,

/s/ John M. Townsend

Attachments

APPENDIX C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543
(202) 479-3011

WILLIAM K. SUTER,
CLERK OF THE COURT

March 23, 1992

Robert J. Sisk
Hughes, Hubbard & Reed
One Battery Park Plaza
New York, NY 20004

Re: Union Mortgage Company, Inc.,
v. Willie Mae Barlow and Willie J. Galy
Application No. A-681

Dear Mr. Sisk:

The Court today entered the following order in the above-entitled case:

"The application for stay of mandate addressed to Justice O'Connor and by her referred to the Court is denied."

Very truly yours,

WILLIAM K. SUTER, Clerk

By: /s/ Francis J. Lorson
Chief Deputy Clerk

gj

cc: John M. Townsend
John A. Taber
Edward L. Hardin, Jr.
Clerk, Supreme Court of Alabama
(Your No. 1901350)